

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1199*

Short Title: Interlock/Open Container Changes.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary II.

May 10, 2000

A BILL TO BE ENTITLED

1 AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF
2 IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND
3 POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH
4 FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL
5 HIGHWAY FUNDS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-17.8(b) reads as rewritten:

9 "(b) Ignition Interlock Required. – When the Division restores the license of a
10 person who is subject to this section, in addition to any other restriction or condition, it
11 shall require the person to agree to and shall indicate on the person's drivers license the
12 following restrictions for the period designated in subsection (c):

13 (1) A restriction that the person may operate only a vehicle that is equipped
14 with a functioning ignition interlock system of a type approved by the
15 ~~Commissioner~~Commissioner and that all vehicles owned by that person
16 shall be equipped with the system. The Commissioner shall not
17 unreasonably withhold approval of an ignition interlock system and
18 shall consult with the Division of Purchase and Contract in the
19 Department of Administration to ensure that potential vendors are not
20 discriminated against.

1 (2) A requirement that the person personally activate the ignition interlock
2 system before driving the motor vehicle.

3 (3) A requirement that the person not drive with an alcohol concentration of
4 0.04 or greater."

5 Section 2. G.S. 20-138.7 reads as rewritten:

6 "**§ 20-138.7. Transporting an open container of alcoholic beverage after consuming**
7 **alcohol. beverage.**

8 (a) Offense. – No person shall drive a motor vehicle on a highway or public
9 vehicular area:

10 (1) While there is an alcoholic beverage other than in the unopened
11 manufacturer's original container in the passenger area; and

12 (2) While the driver is consuming alcohol or while alcohol remains in the
13 driver's body.

14 (a1) Offense. – No person shall drive a motor vehicle on a highway or public
15 vehicular area while there is an alcoholic beverage other than in the unopened
16 manufacturer's original container in the passenger area.

17 (a2) Exception. – It shall not be a violation of subsection (a1) of this section for a
18 driver to drive a motor vehicle while any passenger is in possession of an alcoholic
19 beverage other than in the unopened manufacturer's original container if the container is:

20 (1) In the passenger area of a motor vehicle designed, maintained, or used
21 primarily for the transportation of persons for compensation;

22 (2) In the living quarters of a motor home or house car as defined in G.S.
23 20-4.01(27)d2.;or

24 (3) In a house trailer as defined in 20-4.01(14).

25 (b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-
26 related offense subject to the implied-consent provisions of G.S. 20-16.2.

27 (c) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the
28 driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was
29 remaining in the driver's body in violation of this section, unless the driver was offered an
30 alcohol screening test or chemical analysis and refused to provide all required samples of
31 breath or blood for analysis.

32 (d) Alcohol Screening Test. – Notwithstanding any other provision of law, an
33 alcohol screening test may be administered to a driver suspected of violating subsection
34 (a) of this section, and the results of an alcohol screening test or the driver's refusal to
35 submit may be used by a law enforcement officer, a court, or an administrative agency in
36 determining if alcohol was present in the driver's body. No alcohol screening tests are
37 valid under this section unless the device used is one approved by the Commission for
38 Health Services, and the screening test is conducted in accordance with the applicable
39 regulations of the Commission as to the manner of its use.

40 (e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation
41 of ~~this section~~ subsection (a) of this section shall be ~~punished as a~~ Class 3 misdemeanor for
42 the first offense and shall be ~~punished as a~~ Class 2 misdemeanor for a second or
43 subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one~~

1 ~~thousand dollars (\$1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a
2 lesser included offense of impaired driving under G.S. 20-138.1, but if a person is
3 convicted under ~~this section~~ subsection (a) of this section and of an offense involving
4 impaired driving arising out of the same transaction, the punishment imposed by the court
5 shall not exceed the maximum applicable to the offense involving impaired driving, and
6 any minimum applicable punishment shall be imposed. Violation of subsection (a1) of
7 this section is a lesser included offense of subsection (a) of this section. A violation of
8 ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-
9 16(c).

10 Violation of subsection (a1) of this section shall be an infraction and shall not be
11 considered a moving violation for purposes of G.S. 20-16(c).

12 (f) Definitions. – If the seal on a container of alcoholic beverages has been
13 broken, it is opened within the meaning of this section. For purposes of this section,
14 "passenger area of a motor vehicle" means the area designed to seat the driver and
15 passengers and any area within the reach of a seated driver or passenger, including the
16 glove compartment. The area of the trunk or the area behind the last upright back seat of
17 a station wagon, hatchback, or similar vehicle shall not be considered part of the
18 passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

19 (g) Pleading. – In any prosecution for a violation of ~~this section~~, subsection (a) of
20 this section, the pleading is sufficient if it states the time and place of the alleged offense
21 in the usual form and charges that the defendant drove a motor vehicle on a highway or
22 public vehicular area with an open container of alcoholic beverage after drinking.

23 In any prosecution for a violation of subsection (a1) of this section, the pleading
24 is sufficient if it states the time and place of the alleged offense in the usual form and
25 charges that the defendant drove a motor vehicle on a highway or public vehicular area
26 with an open container of alcoholic beverage.

27 (h) Limited Driving Privilege. – A person who is convicted of violating subsection
28 (a) of this section and whose driver's license is revoked solely based on that conviction
29 may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge
30 may issue the limited driving privilege only if the driver meets the eligibility
31 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.
32 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in
33 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the
34 issuance of a limited driving privilege to a person who is convicted of violating
35 subsection (a) of this section and of driving while impaired as a result of the same
36 transaction."

37 Section 3. This act become effective December 1, 2000, and applies to
38 offenses committed on or after that date.